

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

FLORENTINO ANAYA,

Defendant-Appellant.

UNPUBLISHED

February 16, 1999

No. 202746

Manistee Circuit Court

LC No. 96-002678 FC

Before: Murphy, P.J., and MacKenzie and Talbot, JJ.

MEMORANDUM.

Defendant appeals by right his plea-based convictions of assault with intent to do great bodily harm less than murder, MCL 750.84; MSA 28.279, and habitual offender, third offense, MCL 769.11; MSA 28.1083. We affirm.

Defendant pleaded nolo contendere to the assault and habitual offender charges in return for dismissal of charges of criminal sexual conduct (CSC) in the first degree and habitual offender, fourth offense. During the taking of the plea, defendant responded in the negative when asked by the court if he had been promised anything beyond that which was contained in the plea agreement. The court accepted the pleas. After denying a motion to withdraw the pleas, the court sentenced defendant to thirteen to twenty years in prison.

Initially, defendant argues that the trial court abused its discretion by denying his motion to withdraw his plea. We disagree. Defendant's claim that counsel promised that any reference to the CSC charge would be removed from the presentence report is unsubstantiated. He disclosed no such promise to the court at the plea proceeding; therefore, the claim is waived. MCR 6.302(B)(4). Defendant's claim that counsel rendered ineffective assistance in connection with the plea is without merit. *People v Thew*, 201 Mich App 78, 89; 506 NW2d 547 (1993). Furthermore, we hold that the prosecutor did not have a conflict of interest in this case. The matters on which the prosecutor represented defendant were not substantially similar to the instant matter, and did not give the prosecutor access to confidential information that was used to defendant's disadvantage. MRPC 1.9(c); see also *Barkley v City of Detroit*, 204 Mich App 194, 203-204; 514 NW2d 242 (1994).

Next, defendant argues that his sentence was disproportionate. We disagree. The sentencing guidelines do not apply to habitual offenders. The standard of review for a sentence imposed on an habitual offender is abuse of discretion. If an habitual offender's underlying criminal history demonstrates that he is unable to conform his conduct to the law, a sentence within the statutory limits does not constitute an abuse of discretion. *People v Hansford (After Remand)*, 454 Mich 320, 323-324, 326; 562 NW2d 460 (1997). Defendant's prior record consisted of numerous felonies and misdemeanors, and included assaultive offenses. Defendant has demonstrated that he cannot conform his conduct to the requirements of the law. His sentence was within the statutory limits, MCL 769.11; MSA 28.1082, and did not constitute an abuse of discretion under the circumstances.

Affirmed.

/s/ Barbara B. MacKenzie

/s/ William B. Murphy

/s/ Michael J. Talbot